

# FSA Administrative & Related Requirements

*This chapter describes aid-related requirements that a school must meet in order to participate in the Federal Student Aid programs. Many of these requirements require coordination with other offices at your school. For instance, you may wish to share the contents of this chapter with your school's human resources office, because of the requirements for adequate staffing, the incentive compensation prohibition, and hiring restrictions related to the misuse of government funds. Similarly, your school's academic divisions and its business office will need to be aware of the standards for satisfactory progress policies, readmission of servicemembers, and in-state tuition rates for servicemembers and their families.*

## ADMINISTRATIVE REQUIREMENTS FOR THE FINANCIAL AID OFFICE

### Consistency of information & conflicting information

A school must have a system of identifying and resolving discrepancies in all FSA-related information received by any school office. A school must resolve discrepancies for all students, not just those selected for verification. Resolution includes determining what information is correct and documenting the school's findings in the student's file.

Such a system must include a review of—

- all student aid applications, need analysis documents, MRRs, POPs from COD, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant,
- the Student Aid Report/ISIR for a student—even if a school has previously verified the information on a student's SAR/ISIR, the school must review all information on subsequent SARs/ISIRs, and resolve discrepancies,
- any documents, including any copies of state and federal income tax returns, that are normally collected by the school to verify information received from the student or other sources, and
- any other information submitted or normally available to the school regarding a student's citizenship, previous educational experience, documentation of the student's Social Security number, or other factors relating to the student's eligibility for funds under FSA programs.

For instance, if a student receives an academic scholarship through one school office, that office must notify the aid administrator of these benefits to ensure that the amounts are correctly reported on the student's aid application and are counted as estimated financial assistance for the Campus-Based and Direct Loan programs.

## CHAPTER 3 HIGHLIGHTS

- Administrative requirements for the financial aid office
  - Consistency of information; Coordinating official; OIG referrals; Counseling; Adequate staffing; System of checks & balances
- Ownership, employees & contractors
  - Debarment of school owners or staff
  - Certifying employees or contractors
  - Lower-tier covered transactions
  - Crimes involving FSA funds
  - Past performance of affiliated persons
  - Code of conduct
  - Advisory board compensation
- Contracts with 3rd-party servicers
  - Excluded functions/individuals
  - Requirements for contracting
  - Notifying the Department of contracts
- Incentive compensation prohibited
- Required electronic processes
- Exchanging borrower information with NSLDS and DL servicers
- Satisfactory academic progress
- Taking attendance
- Provisions for U.S. armed forces members & families
  - In-state tuition rates for servicemembers & families at public institutions
  - Readmission of servicemembers

## Related information

- Financial Standards, *Chapter 4*
- Consumer & Safety Information, *Chapter 6*
- Records, Electronic Processes, *Chapter 7*
- Campus Safety, Reports & Other Requirements, *Chapter 8*

## FSA Assessments

To assess your school's compliance with these requirements, see the FSA Assessment modules on "Automation" and "Satisfactory Academic Progress" at: [ifap.ed.gov/qahome/fsaassessment.html](http://ifap.ed.gov/qahome/fsaassessment.html)

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## Administrative capability

To participate in the Federal Student Aid (FSA) programs, a school must demonstrate that it is administratively capable of providing the education it promises and of properly managing the FSA programs.  
34 CFR 668.16

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## Death of a student

If a student dies during the award year, the school isn't required to resolve conflicting information.

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## Coordinating official—definition of capable individual

An individual is "capable" if he or she is certified by the state in which the school is located, if state certification is required. Other factors affecting capability include the individual's successful completion of FSA program training provided or approved by the Department, and previous experience and documented success in FSA program administration.

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## OIG referrals

(34 CFR 668.16(g))

Other examples include—

- a school's admissions or registrar's office must provide the aid office with any information it has that might affect a student's eligibility such as the student's enrollment in an ineligible program, or enrollment in summer classes immediately preceding a fall term of enrollment; and
- a school's business office must inform the aid office whenever it receives information about a student receiving an outside scholarship.

There is a distinction between how long you need to be alert for conflicting information and how long you have to actually resolve a conflict. Even if the processing year has ended, you must continue to resolve conflicting information unless—

- all aid for the period of enrollment has been disbursed, and
- at the time of disbursement, there was no conflicting information, and
- the student is no longer enrolled at the school (and is not intending to re-enroll).

You may not ignore a document in your files unless a student is no longer enrolled. If you have conflicting information in your files, you must resolve it as expeditiously as possible. If you become aware of conflicting information for a student who is no longer enrolled, and there is aid to be disbursed, you must resolve the conflict before making the late or postwithdrawal disbursement.

If aid (that the school was unaware of) is received after the end of a period of enrollment for a student who is intending to re-enroll, that aid must be treated as estimated financial assistance for either the period of enrollment just completed, or for the subsequent period of enrollment. (See the discussion of estimated financial assistance and packaging in *Volume 3*.)

Remember, if any office at your school has information that might affect a student's eligibility for FSA funds, it must provide that information to the school's designated coordinating official. That individual, in turn, must forward it to the financial aid office where procedures must be in place to ensure that any conflicting information is resolved and documented before the student receives any (or any additional) FSA funds.

## OIG Referrals

A school must refer to the Department's Office of Inspector General (OIG) any credible information indicating that an applicant for Federal Student Aid may have engaged in fraud or other criminal misconduct in connection with his or her application.

Commonly falsified items include false claims of independent student status, false claims of citizenship, use of false identities, forgery of signatures of certifications, and false statements of income. Remember that fraud is the intent to deceive as opposed to a mistake. If you suspect such intent on the part of a student, report it to the OIG by phoning 1-800-MISUSED.

## Conflicting information

### Sources of conflicting information

- unsolicited tax returns or schedules,
- information provided by the student to the financial aid office,
- supplemental financial aid applications,
- other offices within the school,
- offices at other educational institutions (not just aid offices),
- ED,
- scholarships and information from outside sources,
- state agencies such as Voc. Rehab., WIA, State Scholarship Agencies, etc.,
- tips from outside sources,
- transcripts from other postsecondary institutions,
- SARs or ISIRs,
- verification,
- C Flags,
- Reject Codes, and
- Comment Codes.

### Examples of conflicting information

Conflicting information may include information related to a student's eligibility such as—

- citizenship status,
- accuracy of SSN,
- default or overpayment status,
- changes in student's academic status (including grade level progression),
- COA elements,
- other student financial assistance or resources, and
- inconsistent information used in calculating the student's EFC.

Conflicting information does not include such things as—

- a household size that differs from number of exemptions on a tax return;
- dependency under IRS rules vs. ED definition of dependency;
- a roster of candidates for an outside scholarship, as opposed to a list of recipients;
- privacy protected information, such as information from professional counselors, chaplains, doctors, etc.;
- assumptions made by the CPS;
- a FAFSA filed using estimated income; and
- a student who has an expired immigration document, but secondary confirmation match is successful.

Schools must also refer to the OIG any third-party servicer who may have engaged in fraud, breach of fiduciary responsibility, or other illegal conduct involving the FSA Programs.

It is always appropriate for a financial aid administrator to consult with a school's legal counsel prior to referring suspected cases of fraud or misconduct to an agency outside of the school. Referrals to the IG are also mentioned in the *Application and Verification Guide*.

### Coordinating official

A participating school must designate a capable individual to administer the FSA programs and to coordinate aid from these programs with all other aid received by students attending the school. To properly package and most effectively use the various types of student assistance (federal, school, state, private, etc.), the coordinating official must be aware of all aid received by students attending the school, regardless of the source. When creating a student's financial aid package, in order to ensure that a student's aid does not exceed his or her need, an aid administrator must include aid the student is receiving from external sources as well as institutional aid and FSA program assistance. Therefore, a school's operations must be administered in a way that ensures all the information the school receives that might affect a student's FSA eligibility is communicated to the coordinating official and to the financial aid office.

### **Separation of function**

For further guidance on the separation of functions, contact the appropriate School Participation Team (see “Contacts” on the Financial Aid Professional portal).

### **Family defined**

A member of an individual’s family is a parent, sibling, spouse, child, spouse’s parent or sibling’s, or child’s spouse.

### **Control and ownership interest**

Definition of control  
34 CFR 600.31(b)  
Ownership interest  
34 CFR 668.15(f)

### ***Counseling***

Schools must provide adequate financial aid counseling to all enrolled and prospective students and their families. In addition, schools must also provide entrance and exit counseling for student borrowers in the Perkins and Direct Loan programs. For a complete discussion of loan counseling requirements, see *Chapter 6* in this volume, and *Volume 6: Campus-Based Programs* (for Perkins disclosure requirements).

### ***Adequate staffing***

To manage a school’s aid programs effectively, the aid administrator must be supported by an adequate number of professional and clerical personnel. The number of staff that is adequate depends on the number of students aided, the number and types of programs in which the school participates, the number of applicants evaluated and processed, the amount of funds administered, and the type of financial aid delivery system the school uses. What may be adequate at one school may be insufficient at another. The Department will determine, on a case-by-case basis, whether a school has an adequate number of qualified persons, based on program reviews, audits, and information provided on the school’s application for approval to participate in the FSA programs.

### ***System of checks and balances***

In addition to having a well-organized financial aid office staffed by qualified personnel, a school must ensure that its administrative procedures for the FSA programs include an adequate system of internal checks and balances. This system, at a minimum, must separate the functions of authorizing payment and disbursing or delivering funds so that no one person or office exercises both functions for any student receiving FSA funds.

Small schools are not exempt from this requirement even though they may have limited staff. Individuals working in either authorization or disbursement may perform other functions as well, but not both authorization and disbursement. These two functions must be performed by individuals who are not members of the same family and who do not together exercise substantial control over the school. If a school performs any aspect of these functions via computer, no one person may have the ability to change data that affect both authorization and disbursement.

While electronic processes enhance accuracy and efficiency, they also can blur separation of functions so the awarding and disbursement occur virtually simultaneously. Schools must set up controls that prevent an individual or an office from having the authority (or the ability) to perform both functions.

In addition, your system also should have controls that prevent cross-functional tampering. For example, financial aid office employees should not be able to change data elements that are entered by the registrar’s office. Finally, your system should only allow individuals with special security classifications to make changes to the programs that determine student need and awards, and it should be able to identify the individuals who make such changes.

## OWNERSHIP, EMPLOYEES & CONTRACTORS

### *Debarment of school owners or staff*

If one of the principals of the school is debarred or suspended by a federal agency, that person is prohibited from participating in any FSA program, so long as the agency's procedures include due process protections that are equivalent to those provided by ED.

The principals of the school include its owners, directors, officers, partners, employees, and any other persons with management or supervisory responsibilities. A principal may also be someone who is not employed by the school but who has critical influence on or substantive influence over a covered transaction (such as the receipt of Pell Grant or Campus-Based funds). For example, a principal may be someone whether or not employed by the school who—

- is in a position to handle federal funds;
- is in a position to influence or control the use of those funds; or
- occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

Schools participating in the FSA programs have a fiduciary responsibility to safeguard FSA funds, and ensure those funds are used for the benefit of the students for whom they are intended. We expect participating institutions to thoroughly examine the background of individuals they employ (or are considering employing) in management or supervisory positions. If a school discovers that a person employed in a management or supervisory capacity has been suspended, or debarred by a federal agency, the school must remove that person from such a position or risk losing its FSA eligibility. Moreover, a school may not enter into a relationship (and must terminate an ongoing relationship) with a lender, third-party servicer, or loan servicer the school determines has been debarred or suspended.

### *Certifying current or prospective employees or contractors*

Before a school may receive FSA funding, it must certify that neither the school nor its employees have been debarred or suspended by a federal agency. (You can find this certification in the Program Participation Agreement and in the Web-based FISAP package available to schools participating in the Campus-Based programs.)

The certification provided by the school is a material representation of fact relied upon by the Department when it enters into a Participation Agreement with the school. Moreover, a school is expected to have knowledge and information normally possessed by a prudent person in the ordinary course of business dealings. Although the Department doesn't dictate how a school must ensure that its principals/employees have not been debarred or suspended by a federal agency, we do hold the school responsible for any information it could reasonably have been expected to know in the course of ordinary operations. In addition, we expect the school to expend a reasonable amount of effort ensuring that it and its employees are in compliance. If the Department learns that a prospective participant knowingly rendered an erroneous certification, in addition to other remedies available, the Department may terminate the participation of the institution.

FSA HB Nov 2011

## Debarment and suspension

In order to protect the public interest, it is the policy of the federal government to conduct business only with responsible individuals. In order to implement this policy, the government takes debarment and suspension actions against individuals whom it determines constitute a current risk to federal agencies.

Executive Order 12549

Federal Acquisition Regulations

(48 CFR Part 9, Subpart 9.4)

34 CFR Part 85

Similar debarment and suspension limitations apply to lenders, third-party servicers, loan servicers, and any individuals who provides services described in 34 CFR 668.2 or 682.200 to an FSA recipient whether or not they are employed by the school as described in 34 CFR 600.85.995(b).

## Covered transactions

For purposes of the debarment/suspension rules, covered transactions include:

- disbursement of FSA funds to a student or borrower,
- certification by an educational institution of eligibility for an FSA loan, and
- acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under an FSA program.

## Checking debarment/suspension status online

The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is available for review at the Excluded Parties List System website (maintained by the General Services Administration):

<http://epls.arnet.gov/>

You should keep a copy of the search results in your records.

## Notifying the Department of change of control

A school must report any changes of control under which a person acquires the ability to affect substantially the actions of the school. Such changes in control trigger a review to determine if the school is financially responsible (see *Chapter 5*).



A school chooses the method and frequency for making a determination about the eligibility of its principals. This might include asking current and prospective employees and contractors, in person or in writing, about their debarment or suspension histories. In addition, a school might also examine the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* to find out if an individual or organization is debarred or suspended. A school should discuss with its attorney the procedures appropriate to its circumstances.

The employees who award FSA funds and those who disburse them should always be included in those whose backgrounds are examined. In addition, employees who participate in other transactions from which the regulations exclude individuals who have been debarred or suspended should be included. A school should consult with its attorney on the individuals it must certify.

### Lower-tier transactions

Examples of common lower-tier covered transactions are a school's contracts with a financial aid consultant service or with a loan collection or billing agency.

The debarment or suspension of a person who is not a principal of the school and who does not work in the financial aid office will not affect the school's FSA eligibility, so long as that person is not involved in any covered transactions.

### Lower-tier covered transactions

A school must not enter into lower-tier covered transactions with a debarred or suspended individual or organization. A lower-tier covered transaction is any transaction between a participant in a covered transaction (such as the school) and another individual or organization, if that transaction stems from a covered transaction. A school must obtain a certification from any lower-tier organization if the amount of the lower-tier transaction is \$25,000 or more. The lower-tier organization must inform the school in writing if the organization or its principals are debarred or suspended. Therefore, the certification does not need to be renewed from year to year.

### Sample certification statement from lower-tier organization

The Department disseminated the following language in April 1989 as a model that schools may use to obtain the required certification statement from a lower-tier organization.

"The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal."

*Federal Register*, May 26, 1988, page 19211, disseminated in Dear Colleague Letter GEN-89-21.

### Crimes involving FSA program funds

In order to safeguard FSA funds, schools are prohibited from having as principals or employing or contracting with other organizations that employ individuals who have engaged in the misuse of government funds. Specifically, a school must not knowingly—

- employ in a capacity that involves the administration of the FSA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of federal, state, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds;
- contract with a school or third-party servicer that has been terminated from the FSA programs for a reason involving the acquisition, use, or expenditure of federal, state, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material

violation of law involving federal, state, or local government funds; or

- contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been:
  - (1) convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of federal, state, or local government funds; or
  - (2) administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

### *Past performance of persons affiliated with a school*

The Department does not consider a school to be financially responsible if any person who exercises substantial control over the school (or any members of the person's family alone or together) owes a liability for an FSA program violation or has ever exercised substantial control over another school (or a third-party servicer) that owes a liability for an FSA program violation, unless that person, family member, school, or servicer demonstrates that the liability is being repaid in accordance with an agreement with the Department.

The Department may consider a school that does not meet this requirement to be financially responsible if the school:

- notifies the Department that the individual repaid to the Department an acceptable portion of the liability, in accordance with the regulations;
- notifies the Department that the liability is currently being repaid in accordance with a written agreement with the Department; or
- demonstrates to the satisfaction of the Department: (1) why the person who exercises substantial control should nevertheless be considered to lack that control, or (2) why the person who exercises substantial control and each member of that person's family does not or did not exercise substantial control over the school or servicer that owes the liability.

### *Code of Conduct*

If a school participates in an FSA loan program, it must publish and enforce a code of conduct that includes bans on:

- revenue-sharing arrangements with any lender,
- steering borrowers to particular lenders or delaying loan certifications, and
- offers of funds for private loans to students in exchange for providing concessions or promises to the lender for a specific number of FSA loans, a specified loan volume, or a preferred lender arrangement.

The code of conduct applies to the officers, employees, and agents of the school and must also prohibit employees of the financial aid office from receiving gifts from a lender, guaranty agency, or loan servicer.

### **Disqualified individuals & PPA**

In its Program Participation Agreement (see Chapter 1), a school agrees to not knowingly employ in a capacity involving the administration of FSA funds, anyone who has pled *nolo contendere* or guilty or has been administratively or judicially determined to have committed fraud or any other material violation of the law involving federal, state, or local government funds.  
(34 CFR 668.14(b) (18)(i)).

### **Fidelity bond coverage for employees**

In the past, schools were required to maintain fidelity bond coverage for their employees. This is no longer a federal requirement for schools that participate in the FSA programs. However, by state law some schools are still required to maintain fidelity bond coverage. Even if a school is not required to do so, it may choose to maintain fidelity bond coverage to protect itself when losses occur because of a lack of integrity, on the part of the school's employees or officers.

### **Advisory board compensation**

HEOA Section 1011

Section 140 of the Truth in Lending Act

Disclosures of Reimbursements for Service on

Advisory Boards

HEOA section 1011 HEA section 485(m)

The code must also prohibit financial aid office staff (or other employees or agents with responsibilities with respect to education loans) from accepting compensation for:

- any type of consulting arrangement or contract to provide services to or on behalf of a lender relating to education loans; and
- service on an advisory board, commission, or group established by lenders or guarantors, except for reimbursement for reasonable expenses.

### *Compensation for serving on an advisory board*

A person employed in a financial aid office who serves on an advisory board cannot receive anything of value from the lender but can receive reimbursement for reasonable expenses associated with participation. A school must report annually to ED any such reasonable expenses paid or provided to any employee who is employed in the financial aid office, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution.

The report must include

- the amount of each specific instance of reasonable expenses paid or provided;
- the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;
- the dates of the activity for which the expenses were paid or provided; and
- a brief description of the activity for which the expenses were paid or provided.

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### **Third-party servicer**

34 CFR 668.1, 668.2, 668.11, 668.14, 668.15, 668.16, 668.23, 668.25, 668.81, 668.82, 668.83, 668.84, 668.86, 668.87, 668.88, 668.89, and Subpart H.

### **CONTRACTS WITH THIRD-PARTY SERVICERS**

Schools are permitted to contract with consultants for assistance in administering the FSA programs. However, the school ultimately is responsible for the use of FSA funds and will be held accountable if the consultant mismanages the programs or program funds.

The General Provisions regulations contain requirements for all participating institutions that contract with third-party servicers. As defined by regulation, a third-party servicer is an individual or organization that enters into a contract (written or otherwise) with a school to administer any aspect of the school's FSA participation.

Examples of functions that are covered by this definition are:

- processing student financial aid applications, performing need analysis, and determining student eligibility or related activities;
- certifying loans, servicing loans, or collecting loans;
- processing output documents for payment to students, and receiving, disbursing, or delivering FSA funds;
- conducting required student consumer information services;

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### **Institutional liability**

A school remains liable for any and all FSA-related actions taken by the servicer on its behalf.



- preparing and certifying requests for cash monitoring or reimbursement funding, preparing and submitting notices and applications required of eligible and participating schools, or preparing the *Fiscal Operations Report and Application to Participate* (FISAP); and
- processing enrollment verification for deferment forms or Student Status Confirmation Reports.

### *Excluded functions*

Examples of functions excluded from the definition of “third-party servicer” are:

- performing lockbox processing of loan payments;
- performing normal electronic fund transfers (EFTs) after being initiated by the school;
- publishing ability-to-benefit tests;
- acting as a Multiple Data Entry Processor (MDE);
- financial and compliance auditing;
- mailing documents prepared by a school or warehousing school records;
- participating in a written arrangement with other eligible schools to make eligibility determinations and FSA awards for certain students (see *Chapter 2*); and
- providing computer services or software.

A person or organization performing these functions is not considered to be a third-party servicer and is not subject to third-party servicer requirements.

### *Excluded individuals*

An employee of a school is not a third-party servicer. For this purpose, an employee is one who:

- works on a full-time, part-time, or temporary basis,
- performs all duties on site at the school under the supervision of the school,
- is paid directly by the school,
- is not employed by or associated with a third-party servicer, and
- is not a third-party servicer for any other school.

### *Requirements for contracting with a third-party servicer*

For purposes of administering FSA programs, a school may only contract with an eligible third-party servicer as specified by the regulatory criteria. Under such a contract, the servicer agrees to comply with all applicable requirements, to refer any suspicion of fraudulent or criminal

### **Notifying ED of 3rd-party servicer contracts**

Schools are required to notify the Department of all third-party servicer contracts, and changes to third-party servicer contracts, as described in *Chapter 5*.

If a school has submitted information regarding its third-party servicers as part of applying for certification or recertification, no additional submission is required.

## Referring information to OIG

The regulations provide the following examples of criminal misconduct:

- False claims by the school for FSA program assistance;
- False claims of independent student status;
- False claims of citizenship;
- Use of false identities;
- Forgery of signatures or certifications;
- False statements of income; and
- Payment of any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of FSA program funds. (See next section on Incentive Compensation.)



## Incentive compensation in the law & regulations

The prohibition of incentive compensation appears in Section 487(a)(20) of the HEA and in the Student Assistance General Provisions regulations at 34 CFR 668.14(b)(22).

## Definitions

See Table 3 for regulatory definitions of

- Commission, bonus, or other incentive payment
- Securing enrollments or the award of financial aid
- Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid
- Enrollment

## “Safe harbors” exceptions

Regulations issued on October 29, 2010 eliminate the safe harbors effective July 1, 2011.

conduct in relation to FSA program administration to the Department’s Inspector General (see margin), and, if the servicer disburses funds, to confirm student eligibility and make the required Returns to Title IV funds (see *Volume 5*) when a student withdraws.

If the contract is terminated, or the servicer ceases to perform any functions prescribed under the contract, the servicer must return to the school all unexpended FSA funds and records related to the servicer’s administration of the school’s participation in the FSA programs.

A third-party servicer must refer to the Department’s Office of Inspector General any information indicating there is reasonable cause to believe that the school might have engaged in fraud or other criminal misconduct in connection with the school’s administration of, or application for, the FSA programs (see sidebar for examples).



## INCENTIVE COMPENSATION PROHIBITION

Schools may not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any individual or entity engaged in recruiting or admission activities or in making decisions regarding the award of FSA program funds.

As stated above, only two types of activities are subject to the incentive compensation ban: securing enrollment (recruitment) and securing financial aid. No other activities are subject to the ban.

The incentive compensation prohibition applies to all individuals with responsibility for recruitment or admission of students, or making decisions about awarding FSA funds. As shown in Table 1, the Department draws a distinction between recruitment activities that involve working with individual students and policy-level determinations that affect recruitment, admission, or the awarding of FSA funds. The Department expects that employees who have titles such as enrollment counselors, recruitment specialists, recruiters, and enrollment managers have sufficiently direct involvement in recruitment that the incentive compensation ban applies to them. Senior managers and executive level employees who are only involved in the development of policy and do not engage in individual student contact or the other covered activities listed in Table 1 will not generally be subject to the incentive compensation ban.



When other activities are coupled with recruitment or securing financial aid, a school must consider how they compensate persons or entities to avoid payments that are prohibited. Table 1 illustrates how these principles would be applied to activities that schools carry out in support of recruitment and financial aid. Payments to persons or entities that undertake or have responsibility for recruitment and decisions related to securing financial aid are subject to the incentive compensation ban even if their work also includes other activities.

Schools may use factors such as seniority or length of employment as a basis for compensating employees covered by the incentive compensation prohibition. Many other qualitative factors may also be used so long as they are not related to the employee's success in securing student enrollments or the award of financial aid. These factors may include such things as job knowledge and professionalism, skills such as analytic ability, initiative in work improvement, clarity in communications, and use and understanding of technology, and traits such as accuracy, thoroughness, dependability, punctuality, adaptability, peer rankings, student evaluations, and interpersonal relations.

**Table 1 : Activities covered by prohibition on incentive compensation**

Covered Activities	Exempt Activities
<i>Activities that are ALWAYS subject to the ban on incentive compensation</i>	<i>Activities NOT subject to the ban on incentive compensation include the following, unless the activities of the employee or entity also involve a covered activity</i>
Recruitment activities, including: <ul style="list-style-type: none"> <li>Targeted information dissemination to individuals;</li> <li>Solicitations to individuals;</li> <li>Contacting potential enrollment applicants; aiding students in filling out enrollment application information</li> </ul>	Marketing activities, including: <ul style="list-style-type: none"> <li>Broad information dissemination;</li> <li>Advertising programs that disseminate information to groups of potential students;</li> <li>Collecting contact information;</li> <li>Screening pre-enrollment information to determine whether a prospective student meets the requirements that an institution has established for enrollment in an academic program;</li> <li>Determining whether an enrollment application is materially complete, as long as the enrollment decision remains with the institution</li> </ul>
Services related to securing financial aid, including completing financial aid applications on behalf of prospective applicants (including activities which are authorized by the Department, such as the FAA Access tool, which can be used to enter, correct, verify, or analyze financial aid application data)	Student support services offered after the point at which financial aid is allowed to be disbursed for a payment period, including: <ul style="list-style-type: none"> <li>General student counseling;</li> <li>Career counseling;</li> <li>Financial aid counseling, including loan management;</li> <li>Online course support - both professional services and computer hardware and software;</li> <li>Academic support services, including tutoring, baimed at student retention, whether that support is provided prior to attendance in classes or after attendance has begun</li> </ul>
	Policy decisions made by senior executives and managers related to the manner in which recruitment, enrollment, or financial aid will be pursued or provided, such as, e.g., decisions to admit only high school graduates

### Incentive compensation

On March 17, 2011, the Department issued additional guidance on incentive compensation. In addition to the tables included in this text, this Dear Colleague Letter provided examples of how the incentive compensation rules are applied, as well as guidance on "tuition sharing" and "profit sharing" and other forms of compensation. See GEN 11-05.

### Two-part test to evaluate if a payment is incentive compensation

1. Is the payment is a commission, bonus, or other incentive payment, defined as an award of a sum of money or something of value paid to or given to a person or entity for services rendered?
2. Is the commission, bonus, or other incentive payment is provided to any person based, in any part directly or indirectly, upon success in securing enrollments or the award of financial aid?

If the answer to each question is "yes," the payment would be prohibited.

See *Session 25: General Provisions and Non-Loan Program Issues—Institutional*, FSA Conference, December 2010

**Table 2 : Types of payments covered by prohibition on incentive compensation**

Types of payment that are direct or indirect payment of incentive compensation	Types of payment that are not direct or indirect payment of incentive compensation
"Tuition sharing" as a measure of compensation when based on a formula that relates the amount payable to the entity to the number of students enrolled as a result of the activity of the entity	Tuition as a source of revenue from which compensation is paid to an unrelated third party for a variety of bundled services (Example 2-B in GEN-11-05)
Profit sharing plans from which distributions are made to individuals based on the number of students enrolled by virtue of covered activities by the recipient (section 668.14(b)(22)(ii)(B))	Profit sharing plans, including 401(k) type plans, from which distributions are made to individuals on a basis that is neutral with respect to the role the recipient plays in student recruitment or the securing of financial aid
Salary adjustments that take the form of incentive payments based directly or indirectly on success in securing enrollments or financial aid	Employee benefits plans offered to all employees on a basis that is neutral with respect to the role the recipient plays in student recruitment or the securing of financial aid
Payments based on the application of an admissions policy	Cost of living adjustments (COLAs)
Bonus or other payments based on success in securing enrollments or financial aid	Compensation adjustments based upon seniority
	Payments to faculty based upon student class size or academic achievement
	Payments to senior executives with responsibility for the development of policies that affect recruitment, enrollment, or financial aid
	Payments based upon securing student housing or other student services, including career counseling
	Volume driven arrangements based on services that are not recruitment or securing of financial aid

Table 3 : Definitions

<p><b>Commission, bonus, or other incentive payment</b> A sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.</p> <p><b>Securing enrollments or the award of financial aid</b> Activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.</p> <p>( 1 ) These activities include contact in any form with a prospective student, such as, but not limited to—contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student’s signing of an enrollment agreement or financial aid application.</p> <p>( 2 ) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on—</p> <p>( i ) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student’s enrollment agreement or financial aid application; or</p> <p>( ii ) The number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are enrolled for any period of time, including through completion of an educational program.</p>	<p><b>Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid</b> ( 1 ) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards FSA funds; and</p> <p>( 2 ) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards FSA funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding FSA funds.</p> <p><b>Enrollment</b> The admission or matriculation of a student into an eligible institution.</p>
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## Electronic processes cite

34 CFR 668.16 (o)

DCL GEN-04-08, September 2004

Federal Register, 09-14-2004, 55418–55420

## Systems help

For help with questions about specific systems, such as application processing and software (CPS.SAIG), COD, and NSLDS, see the “Help” link on the Information for Financial Aid Professionals site: [ifap.ed.gov](http://ifap.ed.gov)

## REQUIRED ELECTRONIC PROCESSES

Schools must be able to use the FSA electronic processes in order to be considered administratively capable of participating in the FSA programs.

In order for a school to exchange data with the FSA Systems, it must have Internet access through its network or through an Internet Service Provider. Your school will also need to enroll in the Student Aid Internet Gateway (SAIG) and establish a data mailbox. Most schools prepare student data records in a software package such as EDExpress and transmit the records as batch files to the SAIG mailbox. The Department’s systems send edited records back to the SAIG mailbox, where the school downloads the records and uses its software to update the records in its own database.

Schools must use COD’s common record format, complying with the published schema for the corresponding award year, to send and receive origination and disbursement data for Pell Grants, TEACH grants, and Direct Loans. This common record format uses Extensible Markup Language (XML).

## Summary of required electronic processes

To be in compliance with the administrative capability requirements of 34 CFR 668.16(o), a school must—

- use the E-App to submit and update the school’s eligibility information:  
**[www.eligcert.ed.gov](http://www.eligcert.ed.gov)**
- enroll in the Student Aid Internet Gateway (SAIG):  
**[www.fsawebenroll.ed.gov](http://www.fsawebenroll.ed.gov)**
- use *FAA Access* or its SAIG mailbox to exchange FAFSA or ISIR data with the Department’s Central Processing System:  
**<http://www.fafsa.ed.gov/FOTWebApp/faa/faa.jsp> or [www.saigportal.ed.gov](http://www.saigportal.ed.gov)**
- use the COD website or its SAIG mailbox to exchange award and disbursement data for Pell Grants, TEACH grants, and Direct Loans:  
**[cod.ed.gov](http://cod.ed.gov) or [www.saigportal.ed.gov](http://www.saigportal.ed.gov)**
- use the eCampus-Based (eCB) System to file the FISAP application and report (see *Volume 6*):  
**[www.cbfsap.ed.gov](http://www.cbfsap.ed.gov)**
- submit to the National Student Loan Data System (NSLDS) the school’s Federal Perkins Loan data, student enrollment records, FSA program overpayments, and NSLDS Transfer Student Monitoring records:  
**<https://www.nslsdfap.ed.gov/secure/logon.asp>**
- electronically submit the school’s annual compliance and financial statement audits, and any other required audits:  
**[ezaudit.ed.gov](http://ezaudit.ed.gov)**
- use the Default Management website to receive its draft and official cohort default rate data electronically: **[ifap.ed.gov/DefaultManagement](http://ifap.ed.gov/DefaultManagement)**
- use the Information for Financial Aid Professionals (IFAP) website to review Dear Colleague Letters, announcements, or Federal Registers: **[ifap.ed.gov](http://ifap.ed.gov)**

To create and edit student records, your school may use the Department's EDEXpress software, or develop its own software, or rely on a third-party software vendor. If you are not using EDEXpress software to prepare your records, it is your responsibility to ensure that the software you use is capable of generating COD records in XML format.

As an alternative, you can now create and edit student records directly on many of our Web sites, such as COD, CPS, and NSLDS. When creating and editing records on the Web, you do not use PC software and you do not have to transmit the changes through your SAIG mailbox.

### *Information for Financial Aid Professionals (IFAP)*

Program information is communicated through our IFAP website ([ifap.ed.gov](http://ifap.ed.gov)) in the form of electronic announcements, Dear Colleague letters, and Federal Registers. One of the most useful features of this website is its notification service, which sends you daily or weekly e-mails that summarize recent postings to IFAP. (Go to "Member Services" on IFAP and select Subscription Options after you've registered.)

Even if you use a third-party servicer to manage your student aid activities, you are responsible for knowing about all new requirements posted on IFAP.

The IFAP site also has links to all major FSA Web sites and services, and a "Help" link that includes contact information for FSA call centers and customer service offices.

### *Minimum systems requirements*

In the past, ED has issued the minimum system requirements schools must meet in order to participate in the Department's electronic processes. (The most recent issuance was for 2005–2006, and gave an optimal configuration of 2.8 GHz/333 MHz Processor and 80 GB hard drive with a high speed Internet connection.) When reviewing your office's computer needs, you should be aware that its system requirements (processor speed, RAM, hard-drive storage, etc.) will depend on which FSA functions the school uses, the number of records processed, and school database interfaces.

## **SHARING INFORMATION WITH NSLDS, DL SERVICERS & GUARANTORS**

### *Reporting student enrollment data to NSLDS*

All schools participating (or approved to participate) in the FSA programs must have some arrangement to report student enrollment data to the National Student Loan Data System (NSLDS) through a Roster file (formerly called the Student Status Confirmation Report or SSCR).

Student enrollment information is extremely important, because it is used to determine if the student is still considered in school, must be moved into repayment, or is eligible for an in-school deferment. For students moving into repayment, the out-of-school status effective date determines when the grace period begins and how soon a student must begin repaying loan funds.

### **Enrollment Reporting Requirements**

34 CFR 682.610 FFEL

34 CFR 685.309(b) Direct Loans

"Dear Colleague" letter GEN-96-5

"Dear Colleague" letter GEN-96-17

See "NSLDS Reference Materials" on IFAP for NSLDS Newsletters, Updates, and other information

### **Receiving Roster Files**

A school (or its servicer) must sign up to receive Roster Files through the SAIG Enrollment site  
[www.fsawebenroll.ed.gov/PMEnroll/index.jsp](http://www.fsawebenroll.ed.gov/PMEnroll/index.jsp)

### **Updating enrollment information on the Web**

You can create or update student enrollment status by using the "Enroll" tab on the NSLDS Professional Access site:

**<https://www.nslsdfap.ed.gov/>**

Support: **1-800-999-8219**

### **Enrollment Reporting/SSCR Technical References**

For more information on reporting enrollment information to NSLDS, including record layouts, error codes, etc., see the **Enrollment Reporting Guide** (formerly the SSCR User's Guide), which is available online on the **ifap.ed.gov** site (see NSLDS Reference Materials > NSLDS User Documentation)

If you will be using the SSCR software package for Enrollment Reporting, see the **SSCR Desk Reference**, which includes record layouts, error codes, etc. and is available at:  
**[www.fsadownload.ed.gov](http://www.fsadownload.ed.gov)**

## Enrollment Status Codes

These codes are listed in the Record Layouts in the SSCR Technical Reference. Data submitted to the Student Loan Clearinghouse uses most of these codes.

A = Approved Leave of Absence

D = Deceased

F = Full-time

G = Graduated

H = Half-time or more, but less than full-time

L = Less than half-time

W = Withdrawn (voluntary or involuntary)

X = Never attended

Z = Record not found

At scheduled times during the year, not less than semiannually, NSLDS sends a Roster file electronically to your school (or its designated servicer) through its SAIG mailbox. The file includes all of the school's students who are identified in NSLDS as Stafford (Direct and FFEL) borrowers (or the beneficiaries of a PLUS loan). The file is not necessarily connected to loans made at your school—you also must report information for students who received some or all of their FSA loans at other schools but are currently attending your school.

Your school (or servicer) must certify the information and return the Roster file within 30 days of receiving it. You may also go to [www.nsldsfa.ed.gov](http://www.nsldsfa.ed.gov) and update information for your students online. You're required to report changes in the student's enrollment status, the effective date of the status and an anticipated completion date. Changes in enrollment to less than half-time, graduated, or withdrawn must be reported within 30 days. However, if a Roster file is expected within 60 days, you may provide the data on that Roster file.

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## Privacy: Sharing student records with lenders

A student authorizes his or her school to release information to lenders by signing the promissory note as part of the loan application process. This authorization covers information relevant to the student's or parent's eligibility to borrow as well as locating the borrower. Examples of such information are enrollment status, financial assistance, and employment records. See *Chapter 7* for more information about recordkeeping and privacy.

If the Roster file that you are returning contains records that don't pass the NSLDS Enrollment Reporting edits, you will receive a response file with the records that didn't pass. Within 10 days, you'll need to make the necessary corrections to these records and resubmit them. If you are using a servicer, you may need to assist the servicer in correcting these errors. Please remember that your school is ultimately responsible for notifying NSLDS of student enrollment changes.

If your school reports enrollment data to the NSLDS, it does not have to complete SSCRs received directly from guaranty agencies. (Receiving an SSCR report from a guaranty agency may be an indication that your school has not reported to NSLDS within the last six months.) However, you must still respond to requests for borrower information from guaranty agencies, lenders, and loan servicers. You must continue to provide loan holders and loan servicers with a borrower's enrollment status and other information needed to locate the borrower for deferment and other repayment purposes.

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## Loan information from the guarantor

Upon request, the guarantor must inform the school of students in default on FFELs.  
34 CFR 682.401(b)(24)

If the lender requests preclaims assistance, the guarantor must inform the school of this request, if the school has requested such notification.

34 CFR 682.404(a)(4)

Sec. 428(c)(2)(H) of the HEA

The guarantor must notify the school when a loan made at that school changes hands, if the school requests such information.

Sec. 428(b)(2)(F) of the HEA

34 CFR 682.401(b)(25)

## *Updating borrower information at separation*

Within 60 days after the exit counseling session, your school must provide the Direct Loan servicer (or the guaranty agency for FFEL) that was listed in the borrower's student aid records any updated information about: the borrower's name; address; references; future permanent address; Social Security number; the identity and address of the borrower's expected employer; the address of the borrower's next of kin; and the borrower's driver's license number and state of issuance.

## *Sharing information about delinquent/defaulted borrowers*

To promote loan repayment, DL schools are encouraged to notify the appropriate Direct Loan servicer if they receive new information about a delinquent borrower's location or employment.

The Direct Loan servicers send electronic reports to participating schools listing all delinquent and defaulted Direct Loan borrowers who took out loans while attending the school. The report, which contains the borrowers' names, addresses, and phone numbers, is organized by the number of days

past due so that schools can contact and counsel borrowers to avoid default. The school may also wish to work with borrowers who have defaulted on their Direct Loans to help these borrowers bring their loans out of default.

A former FFEL school may make agreements to provide the holders of delinquent loans with information about the delinquent borrower's location or employment. The school may also try to contact the borrower and counsel him or her to avoid default.

Former FFEL schools may ask a guaranty agency to provide information about students who were enrolled at the school who have defaulted on their Stafford loans. The guarantor may not charge for this information. The school may also ask the guarantor to notify the school whenever a lender requests default aversion assistance on a loan made at your school, and provide the borrower's name, address, and Social Security number. (The guaranty agency may charge a reasonable fee for this service.) Your school may only use the information to remind the borrower to repay his or her loan(s).

If you've requested it, the guaranty agency must also notify your school when loans to its students are sold, transferred, or assigned to another holder. (The notification must include the address and telephone number of the new loan holder.) This notification requirement only applies to loans that are in the grace period or in repayment, and only if your school was the last school the borrower attended before the loan entered repayment. (For instance, if a student received several Stafford loans while earning a bachelor's degree at your school, but pursued a master's degree at another school before those loans entered repayment, the guarantor is not required to notify you if the loan is sold.)

### *Financial Aid History & Transfer Monitoring*

A school must consider a student's financial aid history in making FSA program awards. The regulations require that schools use NSLDS data to obtain information about a student's financial aid history.

In order to receive students' financial aid history, your school must register for the Transfer Student Monitoring Process.

Through the transfer student monitoring process, NSLDS will monitor a transfer student's financial aid history and alert you to any relevant changes—other than the default and overpayment information reported in the postscreening process—that may affect the student's current award(s).

You must send NSLDS identifying information for students transferring to your school so that NSLDS can use transfer monitoring to notify you of changes to the student's financial aid history. You may send information for students who have expressed an interest in attending your school, even if they have not yet formally applied for admission.

You can find a complete discussion of this requirement and the transfer student monitoring process in *Volume 1, Chapter 3*.

### **Financial aid history**

34 CFR 668.19

DCL GEN-00-12

DCL GEN-01-09, July 2001 (including July 16, 2001, update)

### **Transfer student monitoring process**

You must verify the eligibility of transfer students for FSA funds. You may either check the student's financial aid history on the NSLDS Professional Access site, or wait seven days after you've submitted the student's information for monitoring to receive a response from NSLDS.

To begin using the "inform" feature, you must designate a contact on the "School Transfer Profile" page at:

**[www.nslsdfap.ed.gov](http://www.nslsdfap.ed.gov)**

## Satisfactory progress references

School policy:  
34 CFR 668.16(e),  
Student eligibility:  
34 CFR 668.32(f),  
34 CFR 668.34

## Recent changes to satisfactory progress

The October 29, 2010, regulations made significant changes that may affect your school's satisfactory academic progress policy.

Please be sure to read *Volume 1, Chapter 1* for a comprehensive description of those changes.



## SATISFACTORY ACADEMIC PROGRESS

To be considered administratively capable, a school must have a satisfactory academic progress policy that, for an FSA recipient, is the same as or more strict than the school's standards for a student enrolled in the same educational program who is not receiving assistance under an FSA program.

Because satisfactory progress issues are most often raised in specific student eligibility cases, we discuss the details of satisfactory progress standards in *Volume 1, Chapter 1* of the FSA Handbook. You should carefully review the discussion in *Volume 1* if your school is developing or amending its satisfactory progress policy.

### *Basic elements of a satisfactory progress policy*

As discussed in *Volume 1*, a school's policy must include certain basic elements that are measured at least annually:

- a qualitative component consisting of grades or comparable factors that are measurable against a norm,
- a quantitative component that consists of a maximum time-frame in which a student must complete his or her educational program, subdivided into increments, and
- measurement of progress at the end of each increment.

In addition, your school's policy must explain:

- the effect of ESL courses and remedial courses on progress,
- how progress is measured if a student changes majors or seeks to earn additional degrees,
- how course repetitions are handled,
- the procedures for appealing a satisfactory progress determination, and
- the procedures for re-establishing satisfactory progress.

The policy must include provisions for consistent application of the standards to all students within categories (e.g., full-time, part-time, undergraduate, and graduate students), and educational programs established by the school. Generally, the quantitative and qualitative standards used to judge academic progress include all periods of the student's enrollment. Even periods in which the student did not receive FSA funds must be counted.

### *"C" average required after 2 years*

In addition to any school-determined standards, federal law requires that a student enrolled in a program of study of more than 2 academic years must, once the student has been enrolled for two academic years, have a "C" average or its equivalent, *or have an academic standing consistent with the school's requirement for graduation*. If your school does not use letter grades, it must define the equivalent of a "C" average.



## TAKING ATTENDANCE

A school is required to take attendance if—

- an outside entity (such as the school's accrediting agency or a state agency) has a requirement that the institution take attendance;
- the school itself has a requirement that its instructors take attendance; or
- the school or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

See the regulatory text in the margin for further information.

## PROVISIONS FOR U.S. ARMED FORCES MEMBERS & FAMILY

### *In-state tuition rates for active-duty servicemembers & family attending public institutions*

A public postsecondary school may not charge a member of the armed forces who is on active duty for a period of more than 30 days more than the school's tuition rate for residents of the state. Similarly, the servicemember's spouse and dependent children are entitled to the in-state tuition rate.

In addition, if the servicemember, spouse, or dependent child pays the in-state tuition rate, the public institution must allow them to continue to pay such a rate as long as the individual is continuously enrolled, even if there is a subsequent change in the permanent duty station of the servicemember to a location outside of the state.

### *Readmission of servicemembers*

A school must promptly readmit a servicemember with the same academic status as he or she had when last attending the school or accepted for admission to the school. This requirement applies to any student who cannot attend school due to military service (see sidebar for definition).

The student must notify the school of his or her military service and intention to return to school, as follows:

- *Notification of military service.* The student (or an appropriate officer of the Armed Forces or official of the Department of Defense) must give oral or written notice of such service to the school as far in advance as is reasonable under the circumstances. This notice does not have to indicate whether the student intends to return to the school and may not be subject to any rule of timeliness. (Timeliness must be determined by the facts in any particular case.) Alternatively, at the time of readmission, the student may submit an attestation of military service that necessitated the student's absence from the school. No notice

## Taking attendance

The requirement for a school to take attendance is relevant to the calculations for the Return of Title IV Aid when a student withdraws from an academic program. See *Volume 5, Chapter 2* for a discussion of Return of Title IV Aid.

668.22(b) \*\*\*

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; or

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

(ii) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(iii)(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance the last time attendance is required to be taken during the limited period identified in paragraph (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

(iv) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

Amendment published October 29, 2010  
Effective Date: July 1, 2011

## Definitions for tuition rates for military families

**Armed forces**—the Army, Navy, Air Force, Marine Corps, and Coast Guard.

**Active duty**—full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

**Active duty for a period of more than 30 days**—active duty under a call or order that does not specify a period of 30 days or less. 20 USC 1015d

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## Definitions for readmission

For purposes of this discussion—

**Military service (or service in the uniformed services)**—service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days. (Does not include National Guard service under state authority.)

**Servicemember**—someone who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

**Appropriate officer**—A warrant, commissioned, or noncommissioned officer authorized to give such notice by the military service concerned.

is required if precluded by military necessity, such as service in operations that are classified or would be compromised by such notice.

- *Notification of intent to return to school.* The student must also give oral or written notice of his or her intent to return to the school within 3 years after the completion of the period of service. A student who is hospitalized or convalescing due to an illness or injury incurred or aggravated during the performance of service must notify the school within 2 years after the end of the period needed for recovery from the illness or injury. A student who fails to apply for readmission within these periods does not automatically forfeit eligibility for readmission, but is subject to the school's established leave of absence policy and general practices.

A school must designate one or more offices that a student may contact to provide notification of service and notification of intent to return. The school may not require that these notices follow any particular format.

The school must promptly readmit the student into the next class or classes in the student's program beginning after the student provides notice of intent to reenroll, unless the student requests a later date or unusual circumstances require the school to admit the student at a later date. This requirement supersedes state law—for example, a school must readmit a qualifying servicemember to the next class even if that class is at the maximum enrollment level set by the state.

The school must admit the student with the same academic status, meaning—

- to the same program to which the student was last admitted or, if that exact program is no longer offered, the program that is most similar to that program, unless the student chooses a different program;
- at the same enrollment status, unless the student wants to enroll at a different enrollment status;
- with the same number of credit hours or clock hours previously completed, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable, and
- with the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had.

If the student is readmitted to the same program, for the first academic year in which the student returns, the school must assess the tuition and fee charges that the student was or would have been assessed for the academic year during which the student left the school.

- If veterans' education benefits or other servicemember education benefits will pay the amount in excess of the tuition and fee charges assessed for the academic year in which the student left the school, the school may assess up to the amount of tuition and fee charges that other students in the program are assessed for that academic year.

- If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, the school must assess no more than the tuition and fee charges that other students in the program are assessed for that academic year.

The cumulative length of the absence and of all previous absences from the school for military service may not exceed 5 years. Only the time the student spends actually performing service is counted. (See the chart on the next page for additional rules pertaining to cumulative length of absence.)

### **Reasonable efforts to help prepare student**

If the school determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the school must make reasonable efforts at no extra cost to help the student become prepared or to enable the student to complete the program. This includes providing refresher courses and allowing the student to retake a pretest at no extra cost.

The school is not required to readmit the student if it determines—

- that there are no reasonable efforts it can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program.
- after it makes reasonable efforts, that the student is not prepared to resume or complete the program.

The school carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

- “Reasonable efforts” means actions that do not place an undue hardship on the institution.
- “Undue hardship” means an action requiring significant difficulty or expense when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

### **Termination for bad conduct**

A student’s readmission rights terminate in the case of a dishonorable or bad conduct discharge, general court-martial, federal or state prison sentence, or other reasons as described in 34 CFR 668.18(h).

## Readmission for servicemembers—additional information

### 34 CFR 668.18 (a) General

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(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

### 668.18 (e) Cumulative length of absence.

For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

- (1) That is required, beyond five years, to complete an initial period of obligated service;
- (2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or
- (3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—
  - (i) Ordered to or retained on active duty under—
    - (A) 10 U.S.C. 688 (involuntary active duty by a military retiree);
    - (B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);
    - (C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);
    - (D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);
    - (E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);
    - (F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);
    - (G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);
    - (H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);
    - (I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);
    - (J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);
    - (K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or
    - (L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

### 668.18 (g) Documentation.

(1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

- (i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and
- (ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

- (A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.
- (B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.
- (C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.
- (D) Certificate of completion from military training school.
- (E) Discharge certificate showing character of service.
- (F) Copy of extracts from payroll documents showing periods of service.
- (G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.
- (ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.
- (3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.